

1 PHILLIP A. TALBERT
2 United States Attorney
3 JUSTIN J. GILIO
4 Assistant United States Attorneys
5 2500 Tulare Street, Suite 4401
6 Fresno, CA 93721
7 Telephone: (559) 497-4000
8 Facsimile: (559) 497-4099

9
10
11 Attorneys for Plaintiff
12 United States of America

13
14 IN THE UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16
17
18 UNITED STATES OF AMERICA,
19 Plaintiff,
20 v.
21
22 MICHAEL ERIN VANDEVENTER,
23 Defendant.

24 CASE NO. 1:20-CR-00206-DAD-BAM
25
26 STIPULATION REGARDING EXCLUDABLE
27 TIME PERIODS UNDER SPEEDY TRIAL ACT;
28 AND ORDER
29
30 DATE: October 26, 2022
31 TIME: 1:00 p.m.
32 COURT: Hon. Barbara A. McAuliffe

33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
7710
7711
7712
7713
7714
7715
7716
7717
7718
7719
7720
7721
7722
7723
7724
7725
7726
7727
7728
7729
7730
7731
7732
7733
7734
7735
7736
7737
7738
7739
7740
7741
7742
7743
7744
7745
7746
7747
7748
7749
7750
7751
7752
7753
7754
7755
7756
7757
7758
7759
7760
7761
7762
7763
7764
7765
7766
7767
7768
7769
7770
7771
7772
7773
7774
7775
7776
7777
7778
7779
77710
77711
77712
77713
77714
77715
77716
77717
77718
77719
77720
77721
77722
77723
77724
77725
77726
77727
77728
77729
77730
77731
77732
77733
77734
77735
77736
77737
77738
77739
77740
77741
77742
77743
77744
77745
77746
77747
77748
77749
77750
77751
77752
77753
77754
77755
77756
77757
77758
77759
77760
77761
77762
77763
77764
77765
77766
77767
77768
77769
77770
77771
77772
77773
77774
77775
77776
77777
77778
77779
777710
777711
777712
777713
777714
777715
777716
777717
777718
777719
777720
777721
777722
777723
777724
777725
777726
777727
777728
777729
777730
777731
777732
777733
777734
777735
777736
777737
777738
777739
777740
777741
777742
777743
777744
777745
777746
777747
777748
777749
777750
777751
777752
777753
777754
777755
777756
777757
777758
777759
777760
777761
777762
777763
777764
777765
777766
777767
777768
777769
777770
777771
777772
777773
777774
777775
777776
777777
777778
777779
7777710
7777711
7777712
7777713
7777714
7777715
7777716
7777717
7777718
7777719
7777720
7777721
7777722
7777723
7777724
7777725
7777726
7777727
7777728
7777729
7777730
7777731
7777732
7777733
7777734
7777735
7777736
7777737
7777738
7777739
7777740
7777741
7777742
7777743
7777744
7777745
7777746
7777747
7777748
7777749
7777750
7777751
7777752
7777753
7777754
7777755
7777756
7777757
7777758
7777759
7777760
7777761
7777762
7777763
7777764
7777765
7777766
7777767
7777768
7777769
7777770
7777771
7777772
7777773
7777774
7777775
7777776
7777777
7777778
7777779
77777710
77777711
77777712
77777713
77777714
77777715
77777716
77777717
77777718
77777719
77777720
77777721
77777722
77777723
77777724
77777725
77777726
77777727
77777728
77777729
77777730
77777731
77777732
77777733
77777734
77777735
77777736
77777737
77777738
77777739
77777740
77777741
77777742
77777743
77777744
77777745
77777746
77777747
77777748
77777749
77777750
77777751
77777752
77777753
77777754
77777755
77777756
77777757
77777758
77777759
77777760
77777761
77777762
77777763
77777764
77777765
77777766
77777767
77777768
77777769
77777770
77777771
77777772
77777773
77777774
77777775
77777776
77777777
77777778
77777779
777777710
777777711
777777712
777777713
777777714
777777715
777777716
777777717
777777718
777777719
777777720
777777721
777777722
777777723
777777724
777777725
777777726
777777727
777777728
777777729
777777730
777777731
777777732
777777733
777777734
777777735
777777736
777777737
777777738
777777739
777777740
777777741
777777742
777777743
777777744
777777745
777777746
777777747
777777748
777777749
777777750
777777751
777777752
777777753
777777754
777777755
777777756
777777757
777777758
777777759
777777760
777777761
777777762
777777763
777777764
777777765
777777766
777777767
777777768
777777769
777777770
777777771
777777772
777777773
777777774
777777775
777777776
777777777
777777778
777777779
7777777710
7777777711
7777777712
7777777713
7777777714
7777777715
7777777716
7777777717
7777777718
7777777719
7777777720
7777777721
7777777722
7777777723
7777777724
7777777725
7777777726
7777777727
7777777728
7777777729
7777777730
7777777731
7777777732
7777777733
7777777734
7777777735
7777777736
7777777737
7777777738
7777777739
7777777740
7777777741
7777777742
7777777743
7777777744
7777777745
7777777746
7777777747
7777777748
7777777749
7777777750
7777777751
7777777752
7777777753
7777777754
7777777755
7777777756
7777777757
7777777758
7777777759
7777777760
7777777761
7777777762
7777777763
7777777764
7777777765
7777777766
7777777767
7777777768
7777777769
7777777770
7777777771
7777777772
7777777773
7777777774
7777777775
7777777776
7777777777
7777777778
7777777779
77777777710
77777777711
77777777712
77777777713
77777777714
77777777715
77777777716
77777777717
77777777718
77777777719
77777777720
77777777721
77777777722
77777777723
77777777724
77777777725
77777777726
77777777727
77777777728
77777777729
77777777730
77777777731
77777777732
77777777733
77777777734
77777777735
77777777736
77777777737
77777777738
77777777739
77777777740
77777777741
77777777742
77777777743
77777777744
77777777745
77777777746
77777777747
77777777748
77777777749
77777777750
77777777751
77777777752
77777777753
77777777754
77777777755
77777777756
77777777757
77777777758
77777777759
77777777760
77777777761
77777777762
77777777763
77777777764
77777777765
77777777766
77777777767
77777777768
77777777769
77777777770
77777777771
77777777772
77777777773
77777777774
77777777775
77777777776
77777777777
77777777778
77777777779
777777777710
777777777711
777777777712
777777777713
777777777714
777777777715
777777777716
777777777717
777777777718
777777777719
777777777720
777777777721
777777777722
777777777723
777777777724
777777777725
777777777726
777777777727
777777777728
777777777729
777777777730
777777777731
777777777732
777777777733
777777777734
777777777735
777777777736
777777777737
777777777738
777777777739
777777777740
777777777741
777777777742
777777777743
777777777744
777777777745
777777777746
777777777747
777777777748
777777777749
777777777750
777777777751
777777777752
777777777753
777777777754
777777777755
777777777756
777777777757
777777777758
777777777759
777777777760
777777777761
777777777762
777777777763
777777777764
777777777765
777777777766
777777777767
777777777768
777777777769
777777777770
777777777771
777777777772
777777777773
777777777774
777777777775
777777777776
777777777777
777777777778
777777777779
7777777777710
7777777777711
7777777777712
7777777777713
7777777777714
7777777777715
7777777777716
7777777777717
7777777777718
7777777777719
7777777777720
7777777777721
7777777777722
7777777777723
7777777777724
7777777777725
7777777777726
7777777777727
7777777777728
7777777777729
7777777777730
7777777777731
7777777777732
7777777777733
7777777777734
7777777777735
7777777777736
7777777777737
7777777777738
7777777777739
7777777777740
7777777777741
7777777777742
7777777777743
7777777777744
7777777777745
7777777777746
7777777777747
7777777777748
7777777777749
7777777777750
7777777777751
7777777777752
7777777777753
7777777777754
7777777777755
7777777777756
7777777777757
7777777777758
7777777777759
7777777777760
7777777777761
7777777777762
7777777777763
7777777777764
7777777777765
7777777777766

1 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
 2 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
 3 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
 4 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 5 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 6 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally
 7 or in writing").

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 9 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 10 justice continuances are excludable only if "the judge granted such continuance on the basis of his
 11 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 12 the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 13 unless "the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 14 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 15 and the defendant in a speedy trial." *Id.*

16 The General Orders exclude delay in the "ends of justice." 18 U.S.C. § 3161(h)(7) (Local Code
 17 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 18 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 19 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 20 following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 21 recognized that the eruption created "appreciable difficulty" for the trial to proceed. *Id.* at 767-69; *see*
 22 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 23 following the September 11, 2001 terrorist attacks and the resultant public emergency).

24 The coronavirus poses a similar, albeit more enduring, "appreciable difficulty" to the prompt
 25 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a "non-
 26 exhaustive" list of seven factors it found to be "relevant" in considering ends-of-justice Speedy Trial Act
 27 continuances "in the context of the COVID-19 pandemic." *United States v. Olsen*, --- F.3d ---, 2021 WL
 28 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is

1 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked
2 speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a
3 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness
4 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;
5 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;
6 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

7 In light of the foregoing, this Court should consider the following case-specific facts in finding
8 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)
9 (Local Code T4). If continued, this Court should designate a new date for the status conference. *United*
10 *States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
11 "specifically limited in time").

12 STIPULATION

13 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
14 through defendant's counsel of record, hereby stipulate as follows:

15 1. By previous order, this matter was set for status conference on October 26, 2022.

16 2. By this stipulation, defendant now moves to vacate the status conference and set the case
17 for a change of plea hearing December 12, 2022, at 8:30 a.m. and to exclude time between October 26,
18 2022, and December 12, 2022, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

19 3. The parties agree and stipulate, and request that the Court find the following:

20 a) The government has represented that the discovery associated with this case
21 includes investigative reports, lab reports, social media account search returns, cell phone
22 extractions, cell phone location data, and other items. The discovery in the case is voluminous
23 and has been either produced directly to counsel and/or made available for inspection and
24 copying.

25 b) Counsel for defendant desires additional time to meet with his client, finalize the
26 plea agreement, and prepare for a change of plea hearing.

27 c) Counsel for defendant believes that failure to grant the above-requested
28 continuance would deny him/her the reasonable time necessary for effective preparation, taking

1 into account the exercise of due diligence.

2 d) The government does not object to the continuance.

3 e) In addition to the public health concerns cited by the General Orders and
4 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
5 this case because the defendant is not detained pending trial.

6 f) Based on the above-stated findings, the ends of justice served by continuing the
7 case as requested outweigh the interest of the public and the defendant in a trial within the
8 original date prescribed by the Speedy Trial Act.

9 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
10 et seq., within which trial must commence, the time period of October 26, 2022 to December 12,
11 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
12 T4] because it results from a continuance granted by the Court at defendant's request on the basis
13 of the Court's finding that the ends of justice served by taking such action outweigh the best
14 interest of the public and the defendant in a speedy trial.

15 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
16 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
17 must commence.

18 IT IS SO STIPULATED.

19
20 Dated: October 18, 2022

PHILLIP A. TALBERT
United States Attorney

21
22 /s/ JUSTIN J. GILIO
23 JUSTIN J. GILIO
24 Assistant United States Attorney

25
26 Dated: October 18, 2022

27 /s/ Richard Oberto
28 Richard Oberto
Counsel for Defendant
MICHAEL ERIN
VANDEVENTER

ORDER

IT IS SO ORDERED that the status conference set for October 26, 2022, is vacated. A change of plea hearing is set for **December 12, 2022, at 8:30 a.m. before District Judge Ana de Alba**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: October 19, 2022

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE